

MINUTES  
BOARD OF ADJUSTMENT  
June 7, 2007

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Jason Jaggi, City Planner
Rick Bliss	Jeff Duke, Acting City Attorney
Kevin Williams	
Ray Tait	

Chairman Soule called the meeting to order at 5:00 p.m. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board introduce themselves.

MINUTES

The minutes of the meeting of March 1, 2007 were presented for approval. Rick Bliss noted that he was not in attendance at the meeting as indicated, but rather should indicate Anne Martin's attendance. The "Those in Attendance" portion of the minutes located on the first page will be reflected to accurately reflect the correct members in attendance. The minutes were then approved, as amended, after having been previously distributed to each member.

Chairman Soule indicated that he understands that the applicant (Mr. Douglas Cohen, DOST Corporation) is aware that only four members are present this evening and that the applicant still desires to proceed with his application for variance.

Mr. Cohen indicated that, yes, he wanted to proceed with his presentation.

Chairman Soule indicated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of 5 members and that four members must vote in favor of a variance in order for the requested variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place. Chairman Soule indicated that there is only one matter to consider this evening.

APPEAL FROM DOUG COHEN, DOST CORPORATION, FOR THE PROPERTY AT 319 NORTH CENTRAL AVENUE

At the request of the Chairman, everyone wishing to speak regarding the variance request (including the applicant) was sworn-in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide a brief description of the variance request.

Jason Jaggi began a PowerPoint presentation. The first slide depicted, and Jason explained, that the zoning for this property is R-3 (One and Two Family Dwelling District) with a minimum lot width of 50-feet, as per Article 16, Section 16.4 of the City's Zoning Ordinance, with the exception of lots that were established prior to April, 1959 which are considered conforming lots; however, newly created lots must meet this minimum lot width requirement. Jason indicated that the applicant wants to split the subject lot into two buildable lots. Jason indicated and the second slide depicted that the property presently contains a single family residence, constructed in 1905 and that the property has a front lot width of 100-feet and a rear lot width of 99.96-feet resulting in total lot size of 13,894 square feet. He stated the current structure favors the north portion of the lot and that the lot could be considered a double lot; however, the average width is just slightly under the minimum 50-foot width requirement at 49.99-feet. He stated staff believes all other aspects of the zoning requirements, including minimum lot area, would be met with this subdivision. Jason explained that if the variance is granted, the subdivision plat would then have to proceed through the typical approval process at the Plan Commission level with final approval at the Board of Aldermen level and that the proposal for new construction would, as well, go to the Plan Commission and Architectural Review Board prior to building permit issuance. A slide depicting a location map and a slide depicting an aerial map were presented. Site photos were also presented, concluding the City's presentation.

Chairman Soule asked what direction the front of the existing house faces.

Jason indicated that it faces the east, but is angled toward the north.

Chairman Soule referred to the earlier comment that the existing structure was built in 1905 and the comment that lots that were platted before 1959 are an exception to the current lot requirements. He asked how, if at all, this effects this situation.

Jason stated that any newly created lots must meet the current zoning requirements.

Rick Bliss asked if there would be an issue with regard to the minimum lot area requirement, should the property be divided.

Jason Jaggi replied "no". He stated the newly created lots would meet the minimum lot area requirement.

Chairman Soule asked if the City had any exhibits to present.

Acting City Attorney Duke presented the following exhibits on behalf of the City:

- A. City's Code of Ordinances and City's Master Plan;
- B. Application for Zoning Review;
- C. Zoning Review denial letter as prepared by Jason Jaggi;
- D. Application for appeal;
- E. Property boundary survey; and
- F. Staff report

City staff's presentation is also entered into the record.

Chairman Soule indicated that all Exhibits will be received.

Mr. Cohen, owner/developer, introduced himself, stating his business address is 214 S. Bemiston, Suite 3N and that he is the co-owner of DOST Corporation (AKA Douglas Properties). He stated he believes the variance being sought here is .04". At this time, Mr. Cohen introduced the project architect, Jim Bulejski, to the members.

Mr. Bulejski, project architect, introduced himself, stating his address is 115 W. Cedar, 63119. He stated the geometry of the lot at the rear lot line creates the hardship, as the frontage is 100-feet and that the sides have the same degrees and minutes so therefore, indeed parallel and that there is 50 feet all the way from the front to the back, but the rear line was "kinked" a bit to create this discrepancy. He stated others on the block have the same situation and maintain a similar street appearance.

Ray Tait asked if this "kink" is shared by other properties, if they, too, are under 50-feet.

Mr. Bulejski stated that the next six lots toward the north also share this situation.

Rick Bliss referred to notes on the plans "found iron pipe" and "found cross". He asked what those notes refer to.

Jason Jaggi commented that there are surveyor monuments and that the surveyor will make a cross on hard surfaces (carve out a cross on flatwork) and sometimes paint it.

Rick Bliss asked if this method is no less accurate than a pin.

Jason Jaggi replied "that is correct".

Chairman Soule asked if this is just another way to mark the location.

Jason Jaggi replied "yes".

Ms. Suzanne Hackmann, 314 N. Central (across the street from the subject site) stated she is in favor of the variance. She then noted on the slide depicting the location map where her property is located.

Kevin Williams asked Ms. Hackmann when her house was built.

Ms. Hackmann replied "1906".

Kevin Williams asked Ms. Hackmann how wide her lot is...he asked if it is 96-feet wide.

Ms. Hackmann stated she thought it was 100-feet, but a little less across the back.

Chairman Soule asked Kevin if he was referring to the front or back of her lot.

Kevin Williams replied "back".

Chairman Soule asked Doug Cohen if he had any further comments.

Mr. Cohen indicated that he has plans available if any of the members wished to view them.

Jason Jaggi commented that the design of the project is not a matter for this Board but they can certainly look at the plans if they so desire.

Chairman Soule stated that the design is beyond the authority of this Board; the site plan, design and materials are a matter for the City's Plan Commission/ARB.

Jason Jaggi explained the procedure for reviewing/approving new construction as follows: upon initial plan submittal, staff first conducts a staff site plan review after which a deficiency letter is forwarded to the applicant listing out items that need to be addressed; then the applicant has 30 days to resubmit plans to appear on the Plan Commission/ARB agenda for site plan and architectural review. The subdivision plat is also presented to the Plan Commission, who serves as a recommending body to the Board of Aldermen. Once the subdivision plat, site plan and architectural issues are approved, a building permit is issued and construction can commence.

Chairman Soule asked if this would be the process if the variance is approved.

Jason Jaggi replied "yes".

Ms. Susan Laduzinsky, 322 N. Meramec (her rear yard abuts the rear yard of the subject property). She stated she was in attendance because she is more interested in what is going to be constructed rather than the variance itself. She stated she is neutral about the variance.

Jason Jaggi indicated that property owners within 200 feet of a proposed project to be considered by the Plan Commission/ARB are notified of the meeting.

Chairman Soule asked if other lots that were subdivided have a similar situation and are of similar characteristics.

Jason Jaggi replied “yes”.

Chairman Soule asked if the newly created lots will contain 2 story buildings.

Jason Jaggi stated staff believes the proposal will be for two, 2-unit buildings although plans have not yet been submitted.

Chairman Soule asked if granting the variance requested would observe the spirit of the Zoning Ordinance and secure public safety and welfare.

Jason Jaggi replied “yes”.

Chairman Soule asked if the newly created lots would meet the minimum lot area requirement as defined in Section 16.5 of the Zoning Ordinance.

Jason Jaggi replied “yes”.

Chairman Soule asked if it is a fair statement that this request is for a minimal variance.

Jason Jaggi replied “yes”.

Chairman Soule asked if other aspects of the zoning requirements would be met by the granting of the variance.

Jason Jaggi replied “yes”.

Chairman Soule asked if the deviation from strict application of the Zoning Ordinance authorized by the variance would not constitute a change in the district map, impair an adequate supply of light and air to adjacent property, increase congestion in public streets, increase the danger of fire, materially diminish or impair established property values within the surrounding area, and would not in any other respect impair the public health, safety, comfort, morals and welfare of the City of Clayton.

Jason Jaggi replied “yes”. He stated the new lots would be similar to others in the area and would not cause any additional impact.

Chairman Soule asked if this would follow a predominant pattern.

Jason Jaggi replied “yes”.

Chairman Soule made a motion to grant a variance to Section 16.4 to allow the subdivision of the subject lot, each lot resulting in 50-foot frontage and 49.98-foot along the rear. The motion was

seconded by Rick Bliss and received the following roll call vote: Ayes: Chairman Soule, Rick Bliss, and Ray Tait. Nays: Kevin Williams.

The variance was denied.

Chairman Soule made a motion to adjourn the meeting at 5:35 p.m. The motion was seconded by Ray Tait.

Jason Jaggi advised the members that the same or similar application cannot be presented for a period of one (1) year.

Chairman Soule commented that the only alternative would be to rewind the tape and do a “mulligan”, so to speak. He asked Kevin if he would be willing to allow the applicant to withdraw the variance and come back for consideration at a future meeting.

Kevin Williams indicated that would be acceptable to him. He stated he is concerned because there are larger lots in the area (i.e. 314 and 304 N. Central) and believes they set the rhythm of the neighborhood and that it is inevitable that if this lot is subdivided, that the other large lots will proposed to be subdivided as well.

Chairman Soule stated the importance of preserving the integrity of this Board and to honor Mr. Williams’ vote, as no member is obligated in any way to vote yes or no on any matter that is before them.

Jason Jaggi reminded the members that this decision carries for a period of one full year per the Ordinance.

Rick Bliss asked if it would be the hope (if the applicant withdrew the request or requested it be postponed) that Kevin did not show up at a future meeting in the hopes of receiving a different member and different vote.

Jason Jaggi reminded the members that there is no full compliment of the Board this evening, whereas, with a full compliment (5 members), one member can vote in opposition and the variance can still be granted (4 favorable votes are required in order for a variance to be granted).

Chairman Soule stated that it was previously addressed with the applicant that only 4 members would be in attendance tonight and that it was also previously stated at the onset of the meeting that only 4 were available and the applicant chose to continue.

Ray Tait stated that he would be in favor of a “mulligan” and if that is the case, that Kevin Williams be informed of the date the appeal is back before this Board, rather he is a voting member at that particular meeting or not so he may be given the opportunity to speak.

Rick Bliss stated he voted in favor as this is a minimal request. He stated that since the vote was taken that a legal opinion is probably in order here.

Jeff Duke stated the vote was taken and is on the record and that the vote, therefore, is final.

Chairman Soule stated he would not be comfortable going against the advice of legal counsel.

Mr. Cohen asked if he can re-state the facts of the case and asked for a new vote.

Chairman Soule indicated he did not believe that could happen. He stated he is satisfied with the way the meeting was conducted.

Mr. Cohen stated he is shocked by the vote and that the other properties that have a similar situation did not have to get a variance. He stated the variance being requested is about the width of a pencil.

Chairman Soule stated he could not comment on the other properties and suggested Mr. Cohen take this matter up with an attorney as appeals are not this Board's decision. He stated an appeal can be presented to the Circuit Court. He stated no member is obligated to vote in any manner. He informed Mr. Cohen that he can appreciate the fact that he does not like the outcome, but that he had to know denial was a possibility.

Subsequent to the earlier motion to adjourn, the members voted to adjourn at 5:50 p.m.

Being no further business for the Board of Adjustment, this meeting adjourned at 5:50 p.m.

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Recording Secretary